

MARIJUANA CULTIVATION SUPPRESSION ORDINANCE

HOOPA VALLEY TRIBE
Hoopa, California

Title 34

Ordinance No: 99-1

Date Approved: November 3, 1999

Subject: SUPPRESSION OF CULTIVATION OF MARIJUANA WITHIN THE
EXTERIOR BOUNDARIES OF THE HOOPA VALLEY INDIAN
RESERVATION

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe of California pursuant to authority contained in Article V, Section 1 of the Hoopa Valley Tribal Constitution and Bylaws adopted on June 20, 1972, as approved by the Commissioner of Indian Affairs on August 18, 1972, subsequently confirmed and ratified by the United States Congress on October 31, 1988 in the Hoopa-Yurok Settlement Act (25 U.S.C. § 1300i et seq.) and as amended on June 18, 1996;

WHEREAS: The Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Tribe;

WHEREAS: The Hoopa Valley Constitution, Article IX, section 1(g) authorizes the Hoopa Valley Tribal Council to negotiate with the federal, state and local governments;

WHEREAS: The Hoopa Valley Constitution, Article IX, section 1(k) authorizes the Hoopa Valley Tribal Council to promulgate and enforce ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Tribe;

WHEREAS: The Hoopa Valley Constitution, Article IX, section 1(l) authorizes the Hoopa Valley Tribal Council to safeguard, protect and promote the peace, safety, morals and general welfare of the Hoopa Valley Tribe;

WHEREAS: On November 6, 1996, the People of the State of California enacted the Compassionate Use Act of 1996 codified at Section 11362.5 of the California Health and Safety Code;

WHEREAS: The Compassionate Use Act of 1996 allows seriously ill residents of the State of California who have a written approval or recommendation of a licensed physician to use marijuana for

medical purposes despite the general state criminal prohibition against the cultivation and possession of marijuana;

WHEREAS: The Compassionate Use Act of 1996 lacks standards to implement its goals and is subject to abuse by those persons seeking to traffic in illicit drug sales;

WHEREAS: The current yield of marijuana plants cultivated in Humboldt County is higher than estimated yield reported by some of the proponents of the Compassionate Use Act of 1996;

WHEREAS: The lack of clear standards and other uncertainties in the Compassionate Use Act of 1996 regarding use, possession and cultivation of marijuana have impeded the ability of law enforcement officers to enforce applicable California criminal laws;

WHEREAS: The differing standards for enforcement of state criminal laws regarding the use, possession, and cultivation of marijuana within Humboldt County and the State of California after passage of the Compassionate Use Act of 1996 has rendered said laws civil-regulatory in nature;

WHEREAS: The open and notorious cultivation of marijuana within the exterior boundaries of the Hoopa Valley Indian Reservation under the guise of permissive use in light of the Compassionate Use Act of 1996 is unacceptable and endangers the general welfare, health and safety of residents of the Hoopa Valley Indian Reservation;

WHEREAS: Federal law (21 USC 841(a)(1)) prohibits the cultivation of marijuana in any amount;

WHEREAS: The Humboldt Cannabis Center and other similar establishments in California are able to provide qualified persons with medicinal marijuana as necessary;

WHEREAS: The availability of medicinal marijuana from recognized cannabis suppliers alleviates the need to cultivate marijuana within the exterior boundaries of the Hoopa Valley Indian Reservation;

WHEREAS: The open cultivation of marijuana poses a public health, safety and security risk for residents of the Hoopa Valley Indian Reservation;

WHEREAS: The Hoopa Valley Tribe annually engages in and supports the marijuana eradication efforts of the Hoopa Tribal Police Department, federal government and local law enforcement agencies;

NOW, THEREFORE, BE IT RESOLVED: That the Hoopa Valley Tribal Council hereby enacts the following ordinance.

34.1 SHORT TITLE

This Ordinance may be cited as the Marijuana Cultivation Suppression Ordinance or Title 34.

34.2 PURPOSE

The purpose of this ordinance is to clearly describe the Hoopa Valley Tribe's policy regarding the implementation of the Compassionate Use Act of 1996 and suppression of cultivation of marijuana within the exterior boundaries of the Hoopa Valley Indian Reservation.

34.3 DEFINITIONS

- 34.3.1 "Act" shall mean the Compassionate Use Act of 1996.
- 34.3.2 "Council" shall mean the Hoopa Valley Tribal Council, the governing body of the Hoopa Valley Tribe.
- 34.3.3 "Cultivate" for purposes of this Ordinance shall mean to permit to grow marijuana and also includes possession of any live marijuana plant within exterior boundaries of the Reservation.
- 34.3.4 "Ordinance" shall mean the Marijuana Cultivation Suppression Ordinance.
- 34.3.5 "Person" shall mean all persons whether or not members of the Hoopa Valley Tribe.
- 34.3.6 "Reservation" shall mean the Hoopa Valley Indian Reservation.
- 34.3.7 "State" shall mean the State of California.
- 34.3.8 "Tribal Court" shall mean the Hoopa Valley Tribal Court.

34.3.9 "Tribe" shall mean the Hoopa Valley Tribe, its departments and entities.

34.4 PROHIBITION AGAINST CULTIVATION OF MARIJUANA

No person shall cultivate marijuana within the exterior boundaries of the Reservation.

35.5 ENFORCEMENT OF ORDINANCE

a) This Ordinance shall be enforced by the Hoopa Tribal Police Department and any other law enforcement agency having jurisdiction on the Reservation. Any Tribal law enforcement officer, or any person officially appointed by the Hoopa Valley Tribal Council in consultation with the Chief of the Hoopa Tribal Police Department, may issue a citation for violation of this Ordinance, provided that nothing herein shall prohibit the Hoopa Tribal Police Department or any other authorized law enforcement agency from enforcement of any applicable criminal statutes, rules, regulations or ordinances, including those related to confiscation, seizure and forfeiture.

b) Nothing herein shall prohibit the Hoopa Valley Tribal Council or individual residents of the Reservation from instituting a civil action before the Tribal Court against a person alleged to be acting in violation of this Ordinance. Remedies available in such a private action include those described in sections 34.7.4 and 34.7.5. The prevailing party is entitled to recovery for court fees, costs and reasonable attorneys' fees from the non-prevailing party.

c) Should an individual described in section 34.5(b), above institute a private suit against an individual alleged to be violating this Ordinance, the Plaintiff shall provide written notice of the initiation of said action to the Office of Tribal Attorney of the Hoopa Valley Tribe, within five (5) days of the filing of such an action.

34.6 TRIBAL COURT JURISDICTION

Adjudication of violations of this Ordinance shall be within the jurisdiction of the Tribal Court.

34.7 PENALTIES

34.7.1 Civil Penalties

Any person who violates this Ordinance shall be fined a civil penalty not to exceed \$500.00 or the reasonable costs of investigation, seizure, forfeiture, destruction, litigation, and payment of reasonable costs and fees associated with the enforcement of this Ordinance, whichever is greater.

34.7.2 Exclusion From Reservation

Any person who violates this Act may also be subject to exclusion from the Hoopa Valley Reservation in accordance with the Exclusion Ordinance of the Hoopa Valley Tribe.

34.7.3 Criminal Prosecution

Nothing herein shall prevent the Tribe from seeking criminal prosecution of any person who violates this Ordinance for violation of any applicable criminal law(s) by the appropriate authorities.

34.7.4 Injunction Prohibiting Cultivation of Marijuana

Upon application for a Temporary Restraining Order, preliminary injunction and/or permanent injunction prohibiting the cultivation of marijuana, the Tribal Court is authorized to issue the requested order in accordance with this Ordinance and applicable rules of court.

34.7.4.1 Content of Declaration In Support of Request for Injunctive Relief

Any declaration in support of a request for injunctive relief shall contain the following information:

- a) The approximate number of marijuana plants under cultivation;
- b) The date of any citation(s) issued pursuant to this Ordinance;
- c) The name of the person issued the citation;
- d) The name of the owner of the property where the marijuana is located;
- e) The description of the physical location of the property where the marijuana is located;

- f) Whether any photographs or video tapes were taken of the marijuana plants; and
- g) Any other relevant information.

34.7.5 Seizure & Destruction of Marijuana

In addition to the remedies outlined above, the Tribal Court is authorized to issue appropriate orders to seize, forfeit and destroy marijuana plants cultivated in violation of this Ordinance.

34.7.5.1 Content of Declaration in Support of Request for Order of Seizure, Forfeiture and/or Destruction of Marijuana

Any declaration in support of a request for an order of seizure, forfeiture and/or destruction of marijuana plants shall contain the following information:

- a) The approximate number of marijuana plants to be seized, forfeited and destroyed;
- b) The date of any citation(s) issued pursuant to this Ordinance;
- c) The name of the person issued the citation;
- d) The name of the owner of the property where the marijuana is located;
- e) The description of the physical location of the property where the marijuana is located;
- f) Whether any photographs or video tapes were taken of the marijuana plants;
- g) A statement that the law enforcement officer believes that the marijuana plant(s) may be removed by the Defendant prior to completion of the Tribal Court action;
- h) A statement as to whether any marijuana samples are necessary for prosecution of a criminal action; and
- i) Any other relevant information.

34.7.6 Notice and Service

All declarations and other pleadings filed with the Tribal Court in support of any requested order shall be served upon the Defendant(s) in accordance with the applicable rules of court.

34.7.7 Voluntary Destruction of Marijuana

No action instituted for alleged violation(s) of this Ordinance shall be rendered moot, including the imposition of appropriate civil penalties and/or injunctive relief, by voluntary destruction or removal of marijuana plants by a Defendant(s).

34.7.8 Involuntary Destruction of Marijuana

Upon receipt of a Tribal Court order, the Hoopa Tribal Police Department or other appropriate law enforcement agency is authorized to destroy the marijuana as appropriate. Should any funds be received as a result of destruction of the marijuana, said funds shall be distributed equally between the Hoopa Tribal Police Department and the Tribal Court.

34.8 MEDICINAL USE DEFENSE NOT AVAILABLE

The Tribal Court shall not recognize as a defense to the alleged violation of this Ordinance any defense based upon alleged medicinal use, recommendation by a physician, necessity or the application of the Act.

34.9 SEVERABILITY

If any part of this Act is held to be invalid the remainder shall remain in full force and effect to the maximum extent possible.

34.10 SOVEREIGN IMMUNITY

Nothing in this Ordinance is intended to, nor should it be construed as, a waiver of the protections of sovereign immunity of the Hoopa Valley Tribe or its officials or employees, including those against suit in any court.

CERTIFICATION

I, the undersigned, as Vice-Chairman of the Hoopa Valley Tribal Council do hereby certify that the Hoopa Valley Tribal

Council, composed of eight members, of which five (5) were present constituting a quorum at a Special meeting thereof, duly and specially called, noticed and convened, and held this 3rd day of November, 1999; and that this resolution was duly adopted by a vote of four (4) for and none (0) against, none (0) abstaining and that said Ordinance has not been rescinded or amended in any way.

Dated this 3rd day of November, 1999.

Joseph LeMieux, Vice-Chairman
Hoopa Valley Tribal Council

Attest: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council